

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, AT TACOMA

<p>T-MOBILE USA, INC., a Delaware Corporation,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>SHERMAN TERRY, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>No. 3:11-cv-5655-RBL</p> <p><u>FINAL JUDGMENT AND PERMANENT INJUNCTION AGAINST DEFENDANTS</u></p>
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Plaintiff T-Mobile USA, Inc. (“T-Mobile”), brought the above-captioned lawsuit against Defendants Sherman Terry, Custom Access, Inc., Sandra Ortiz, George Collett, Marilou Collett, Mathew Collett and Sarah Hoffman (“Defendants”), alleging that Defendants are engaged in, and knowingly facilitate and encourage others to engage in the unlawful bulk purchase, computer hacking, and trafficking in T-Mobile-branded Subscriber Identity Module (“SIM”) cards that have been improperly loaded with stolen airtime, trafficking in and/or using the confidential and proprietary T-Mobile codes that are required to access T-Mobile’s proprietary activation system and wireless telecommunications network, selling methods and processes to defraud T-Mobile, and illegally accessing T-Mobile’s computers for the purpose of defrauding T-Mobile. Plaintiff further alleges that this is part of a larger scheme involving the unauthorized and unlawful bulk purchase, trafficking, advertising, and resale of T-Mobile prepaid wireless telephones (“Prepaid Handsets” or

1 “Handsets”), including the resale of Handsets to buyers in foreign countries, unauthorized and
2 unlawful computer unlocking of T-Mobile Prepaid Handsets, alteration of proprietary
3 software computer codes installed in the Handsets to permit T-Mobile to subsidize the cost of
4 the Handsets, and trafficking of the Handsets and SIM cards for profit (collectively, the
5 “Subsidy Theft and Activation Fraud Scheme”).

6 Defendants and their co-conspirators perpetrate the Subsidy Theft and Activation
7 Fraud Scheme by acquiring large quantities of T-Mobile Prepaid Handsets including SIM
8 cards, from retail stores, and by soliciting others (“Runners”) to purchase T-Mobile Prepaid
9 Handsets with SIM cards in large quantities. The T-Mobile Prepaid Handsets are then
10 removed from their original packaging, along with the accessories, including copies of the
11 written warranties and ownership manuals, and the Handsets are shipped, unlocked or to be
12 unlocked, and the accompanying activation materials, including but not limited to SIM cards,
13 are resold by Defendants and their co-conspirators at a substantial profit. The T-Mobile
14 Prepaid Handsets are acquired with the knowledge and intent that they will not be activated
15 for use on the T-Mobile prepaid wireless network, as required by the terms of the T-Mobile
16 contracts. Instead, the T-Mobile Prepaid Handsets are computer-hacked. The purpose of this
17 hacking, known as “unlocking,” is to erase, remove, and/or disable the proprietary software
18 installed in the Handsets by the manufacturers at the request and expense of T-Mobile, which
19 enables the use of the T-Mobile Prepaid Handsets exclusively on T-Mobile’s prepaid wireless
20 system. The illegally unlocked Handsets are trafficked and resold as new by Defendants and
21 their co-conspirators, at a premium, under the T-Mobile trademarks and the SIM cards are
22 sold fraudulently activated or to be fraudulently activated on the T-Mobile network.

23 Defendants and their co-conspirators use confidential and proprietary materials to
24 illegally access T-Mobile’s secure computers to fraudulently activate SIM cards on T-
25 Mobile’s wireless telecommunications network. Defendants and their co-conspirators then
26 traffic in the illegally-acquired airtime, the confidential and proprietary activation materials,
27 and the methods and processes to defraud T-Mobile.

As a result of the Defendants' active participation in the Subsidy Theft and Activation Fraud Scheme, T-Mobile brought claims against Defendants for federal trademark infringement and false advertising under 15 U.S.C. § 1125(a)(1)(A) and (B); violations of the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.* and Georgia Statute § 16-9-93, Computer Systems Protection Act; contributory trademark infringement; common law fraud; unfair competition in violation of Georgia Statute § 23-2-55; deceptive trade practices in violation of Georgia statute § 10-1-374 *et seq.*; tortious interference with prospective business advantage; civil conspiracy; unjust enrichment; and conversion.

On April 23, 2012, the Court entered an Order Granting Partial Summary Judgment and Entering Permanent Injunction Against Defendant George Collett. (Dkt. #182). Subsequent to the Summary Judgment Order, the Court entered an Order striking George Collett's answer and entering default judgment on the claims not addressed in the Summary Judgment Order. The Court has also entered default judgment against Defendants Custom Access, Inc., Sherman Terry and Sandra Ortiz. With respect to Defendants Marilou Collett, Mathew Collett, and Sarah Hoffman, the Court has struck their answers and entered default judgments against them. Accordingly, pursuant to Federal Rules of Civil Procedure 8(b)(6), 54(b), 55(b), 56, 58 and 65, the Local Rules of the Court, the respective positions advocated by the parties and having reviewed the Complaint and file and being otherwise duly and fully advised in the premises, it is hereby

ORDERED, ADJUDGED and DECREED that:

1. This Court has jurisdiction over all the parties and all of the claims set forth in T-Mobile's Complaint. Venue is proper in this judicial District.

2. The Court finds that T-Mobile has the right to use and enforce said rights in the standard character mark T-Mobile and a stylized T-Mobile Mark (collectively, the "T-Mobile Marks"), as depicted below:



1
2 T-Mobile uses the T-Mobile Marks on and in connection with its telecommunications
3 products and services. T-Mobile alleges that Defendants' use of the T-Mobile Marks
4 without authorization in connection with the Subsidy Theft and Activation Fraud Scheme
5 has caused, and will further cause, a likelihood of confusion, mistake and deception as to
6 the source of origin of the counterfeit products, and the relationship between T-Mobile
7 and Defendants. T-Mobile alleges that Defendants' activities constitute false designation
8 of origin, false descriptions and representations, and false advertising in commerce in
9 violation of § 43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A) and (B). T-Mobile
10 alleges that Defendants knew or should have known that T-Mobile is the licensee of the
11 T-Mobile Marks and that Defendants had no legal right to use the T-Mobile Marks on
12 infringing products.

13 3. The Court finds that the conduct set forth in the Complaint constitutes
14 violations of 15 U.S.C. § 1125(a)(1)(A) and (B) (federal trademark infringement and false
15 advertising). The Court further finds that the conduct constitutes violations of the federal
16 Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.* and Georgia Statute § 16-9-93,
17 Computer Systems Protection Act; contributory trademark infringement; common law
18 fraud; unfair competition in violation of Georgia Statute § 23-2-55; deceptive trade
19 practices in violation of Georgia statute § 10-1-374 *et seq.*; tortious interference with
20 prospective business advantage; civil conspiracy; unjust enrichment; and conversion, and
21 has caused substantial and irreparable harm to T-Mobile, and will continue to cause
22 substantial and irreparable harm to T-Mobile unless enjoined.

23 4. T-Mobile has suffered damages, including loss of goodwill and damage to
24 its reputation, as a result of Defendants' conduct that far exceeds the \$5,000 aggregate
25 annual damages under the Computer Fraud and Abuse Act. On review and consideration
26 of all relevant factors, T-Mobile is entitled to damages and injunctive relief on the claims
27 as set forth in the Complaint.

1 5. Final judgment is hereby entered against Defendants Sherman Terry,
2 Custom Access, Inc., Sandra Ortiz, George Collett, Marilou Collett, Mathew Collett and
3 Sarah Hoffman, jointly and severally, and in favor of the Plaintiff T-Mobile USA, Inc., on
4 all of the claims set forth in T-Mobile's Complaint in the principal amount of One
5 Million, Thirty-Four Thousand, Nine Hundred and Thirty-Eight Dollars and Sixteen Cents
6 (\$1,034,938.16 (U.S.)), which shall bear interest at the legal rate, for which let execution
7 issue forthwith.

8 6. Defendants Sherman Terry, Custom Access, Inc., Sandra Ortiz, George
9 Collett, Marilou Collett, Mathew Collett and Sarah Hoffman, and each of their respective
10 partners, agents, representatives, employees, servants, heirs, personal representatives,
11 beneficiaries, relatives, contractors, companies, corporations, including, but not limited to,
12 Custom Access, Inc. and Cell Phone George Inc., and each and all of Custom Access, Inc.
13 and Cell Phone George Inc.'s past and present respective officers, directors, successors,
14 assigns, parents, subsidiaries, affiliates, related companies, predecessors-in-interest,
15 companies, respective agents, and employees, and all other persons acting on behalf of or
16 for the benefit of any Defendant or who are in active concert or participation with any
17 Defendant, including but not limited to any corporation, partnership, association,
18 proprietorship or entity of any type that is in any way affiliated or associated with a
19 Defendant or a Defendant's representatives, agents, assigns, employees, servants,
20 affiliated entities, and any and all persons and entities in active concert and participation
21 with any Defendant who receive notice of this Order, shall be and hereby are
22 PERMANENTLY ENJOINED from:

- 23 a. purchasing, selling, providing, altering, advertising, soliciting, using,
24 and/or shipping, directly or indirectly, any T-Mobile "Activation
25 Materials," which consist of SIM cards, PIN numbers, activation and
26 proprietary codes, and/or other mechanism, process or materials
27

1 used to activate service or acquire airtime in connection with an
2 activation on the T-Mobile network;

3 b. purchasing, selling, unlocking, reflashing, altering, advertising,
4 soliciting, using, and/or shipping, directly or indirectly, any T-
5 Mobile products or services.

6 c. purchasing, selling, unlocking, reflashing, altering, advertising,
7 soliciting and/or shipping, directly or indirectly, any Activation
8 Materials or T-Mobile mobile device that Defendants know or
9 should know bears any T-Mobile marks or any marks likely to cause
10 confusion with the T-Mobile marks, or any other trademark, service
11 mark, trade name and/or trade dress owned or used by T-Mobile
12 now or in the future;

13 d. accessing, directly or indirectly, personally or through an agent or
14 associate, any of T-Mobile's internal computers or computer
15 systems;

16 e. accessing, altering, erasing, tampering with, deleting or otherwise
17 disabling the software contained in any T-Mobile mobile device;

18 f. supplying T-Mobile Activation Materials or mobile device to or
19 facilitating or in any way assisting other persons or entities who
20 Defendants know or should know are engaged in selling SIM cards,
21 Activation Materials, and/or methods or processes to defraud T-
22 Mobile or are unlocking T-Mobile mobile device and/or hacking,
23 altering, erasing, tampering with, deleting or otherwise disabling the
24 software installed in T-Mobile mobile device;

25 g. supplying T-Mobile Activation Materials or devices to or facilitating
26 or in any way assisting other persons or entities who Defendants
27 know or should know are engaged in any of the acts prohibited

1 under this Permanent Injunction, including, without limitation, the
2 buying and/or selling of T-Mobile Activation Materials or mobile
3 device; and

4 h. knowingly using the T-Mobile marks or any other trademark,
5 service mark, trade name and/or trade dress owned or used by T-
6 Mobile now or in the future, or that is likely to cause confusion with
7 T-Mobile's marks, without T-Mobile's prior written authorization.

8 7. The purchase, sale, trafficking, use, or shipment of any T-Mobile mobile
9 device, SIM card, accessory, or Activation Materials without T-Mobile's prior written
10 consent within and/or outside of the continental United States is and shall be deemed a
11 presumptive violation of this permanent injunction.

12 8. Pursuant to the Lanham Act, Defendants shall deliver and turn over all T-
13 Mobile SIM cards, handsets, and products in their possession, or subject to their custody or
14 control, bearing or infringing on any T-Mobile trademark or a confusingly similar copy
15 thereof, to T-Mobile within 10 days of the date of this Final Judgment.

16 9. The last known address of George Collett is 510 South 112th Street,
17 Tacoma, WA 98444.

18 10. The last known address of Marilou Collett is 8714 S. Asotin Street,
19 Tacoma, WA 98444.

20 11. The last known address of Matthew Collett is 1010 S. 21st Street, Tacoma,
21 WA 98405.

22 12. The last known address of Sarah Hoffman is 1010 S. 21st Street, Tacoma,
23 WA 98405.

24 13. The last known address of Defendant Sherman Terry is, c/o FPC Atlanta,
25 P.O. Box 150160, Unit #G-11, Atlanta, Georgia 30315.

26 14. The last known address of Defendant Sandra Ortiz is 84 Clantoy Street,
27 Springfield, Massachusetts 01104.

